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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Reportable/ not Reportable

Case No: 5797/2025

In the matter between:

D[...] S[...]

Applicant

and

K[...] V[...] D[...] M[...]

Respondent

Coram: MNYOVU AJ

Date heard: 24 April 2026

Date delivered: 07 August 2026

ORDER

- i. The respondent is ordered to pay costs reserved on 31 October 2025.
 - ii. The applicant is granted leave to present its bill of costs.
 - iii. The respondent is ordered to pay costs of this application.
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JUDGMENT

MNYOVU AJ

Introduction

- [1] This is an opposed application for relief of costs reserved emanating from an urgent application judgment of Honourable Acting Judge Mabuza.
- [2] The applicant brought an urgent application (the main application) for restoration of the applicant's contact and /or visitation rights to his minor child, which application was opposed by the respondent who filed an answering raising *points in limine* on the issue of urgency in that urgency was self – created, the Court disagreed with the respondent's submissions

and granted applicant the relief sought, on 31 October 2025, the following was ordered on costs para 6:

‘Costs are reserved’.

Legal principles on reserved costs

- [3] If a Court reserved costs, to be argued and adjudicated upon at a later stage, it cannot be taxed until the court has made a ruling on who is ultimately liable for the reserved cost.¹
- [4] In *AA Mutual Insurance Association Ltd v Gcanga*² it was held that a reserved costs order does not become attached to the main judgement and that it *‘remained separate from and independent of that judgement and did not necessarily follow the result of the action between the parties’*
- [5] The applicant obtained a final relief on the same terms of restoring his contact rights/ visitation on opposed basis, an order was granted with reserved cost, those costs remained separate and independent from this judgement.
- [6] For this legal position to be considered in the above contest of the facts of this matter. This being the case, in my view, it becomes apparent that the applicant became entitled to ask this court to determine who should be responsible for the reserved costs, failure and or neglect to address reserved costs orders prior to finalisation of a matter can ultimately cost clients a vast amount in legal fees, and the clients be burdened with reserved costs.

¹ See, in this regard, the matter of *Martin No v Road Accident Fund 2000* (2) SA (W) where it was held at p1029 C-D as follows: Returning to our own practice: where the judgement is given in a case where costs of earlier proceedings have been reserved, the Court should, and generally does, deal with any costs that were reserved. If it overlooks its task to do so, its attention is drawn to the oversight. If this is not done as judgement is delivered, the parties can approach the court to deal with the outstanding issue. Costs that are reserved for the decision of the Court thereon ought to be adjudicated upon by the Court unless the parties, by agreement, relieve the Court from that task.’

² 1980 (1) (SA) 858 (A).

- [7] Judge Albert Kruger and Wilma Mostert in *Taxation of Costs: A Practical guide* (Durban: LexisNexis 2010) at 10 states that:

'It is therefore the duty of the attorney or counsel to bring the reserved costs under the court's attention to make a final decision neither on trial or settlement of the matter. If the attorney or advocate neglects to ask the court for an order or to obtain an agreement on the reserved costs, those costs cannot be recovered from the other party on taxation and their own client would be legally responsible to settle reserved costs in respect whereof no further costs order was made.'

Submissions by the applicant

- [8] It is submitted by the applicant's counsel that the reserved costs are emanating from urgent application, in respect of the cost's arguments, the respondent was forewarned through her legal representative to restore the contact rights of the applicant in terms of Section 28 of the Children's Act, 38 of 2005, failing which an urgent application will be brought before Court.
- [9] The correspondent letter resembling the timelines, dated 23 October 2025 were sent to the respondent's legal representatives, requesting the mediation to the matter, to have a proper parenting plan drawn up to regulate the parental rights and responsibilities for both parties, and arrangements to be confirmed by no later than 24 October 2025, to with respondent never responded.
- [10] Counsel argued that respondent took the law into her own hands by unilaterally refused the applicant his contact rights to the minor child, as it was clear that the direct behaviour of the respondent and her subsequent

refusal to co-operate or respond to the request of the applicant, was not in the best interest of the minor child, and led to urgent application.

[11] The counsel for the applicant submitted in his arguments that it is more often than not the practice that Courts do not make costs orders in the family matters, however, with this being said the Court also takes the conduct, especially if egregious into account, this conduct includes the communication, letter exchanged between parties, especially if the contents of those letters are contrary to the intentions of the Children's Act, which requires parties to take a reconciliatory approach to matters involving children, the respondent's behaviour in ignoring the contents of the letters was also in contradiction to the reconciliatory approach as set out in the Children's Act.

[12] It was submitted that in the circumstances the respondent's conduct as set out above warrants that an appropriate costs order should be granted in favour of the applicant, as such the aspect of costs should follow the successful party, and those costs sought by the applicant should include cost of counsel as per Scale B, as the Honourable Court reserved the issue in respect of costs.

Submissions by the respondent

[13] The Counsel for respondent argued the *points in limine* that were detailed in respondent's answering affidavit which I do not need to repeat them.

[14] In arguing the costs reserved in the main application, Counsel for the respondent submitted that from the correspondences exchanged, it was clear indication from both parties that all parties are open to mediation, as parties were in the midst of discussing a possible suitable date to be around

November 2025 and there was non-compliance of Rule 41A by the applicant.

- [15] Counsel for the respondent further submitted that applicant should have just followed through the request for mediation and refrained from incurring unnecessary costs, in so-called urgency that may have existed and self-created, as such applicant's launching the urgent application in the face of ongoing attempts at mediation and without complying with Rule 41A was unreasonable and unjustifiable, therefore, the applicant should be liable to pay costs of the urgent application.

Issues for determination

- [16] A judgement on costs is a court order which party must pay the legal expenses in a lawsuit, in South Africa, the general rule is that the successful party is awarded their costs, which means a losing party pays. In awarding costs, a court has a discretion which should be exercised judicially, a court should consider the circumstances of each case, weighing the issues in the case, the conduct of the parties and any other circumstances which may have a bearing on the issue of costs and then make such order as would be fair and just between the parties.³

- [17] In this current matter I am tasked to adjudicate on the reserved costs and unreserved them from the main application that was brought before my sister Acting Judge Mabuza on 31 October 2025. The parties have submitted and argued for the adjudication of the reserved costs before me to decide which party will be liable for the payment of the costs, if any.

³ Fripp v Gibbon & Co 1913 AD 354 at 363.

[18] Any party from the main application had the duty to bring the application to unreserve the costs, however, the applicant launched this current application, and the respondent opposed it.

Analysis on Costs

[19] Counsel for the respondent did not fully address this Court on the grounds of the conduct and behaviour of the respondent in contravening section 58 of Children's Act, and the reasons why in the main application the applicant was granted the relief sought on urgent basis. counsel simply argue on *points of limine* from the respondent's answering affidavit, which was not of assistance before me.

[20] In the present case I am gleaned to the conduct of the respondent in the main application as alluded in para 16 of my judgment. In the circumstances of this case, and weighing the issues in this case, I am of the view that the conduct of the respondent was egregious and contrary to the intentions of the Children's Act.

[21] It is trite law that the general rule pertaining to costs is that the successful party should be awarded costs and this rule should not be departed from unless there are good reasons for doing so, I can see no reason why the applicant should not be awarded costs at this stage, the respondent was sole cause that the applicant launched the urgent application, which the respondent lost focus on the rules of the Urgent applications, and chose to ignore Children's Act on the best interest of the child, the respondent treated the application into her own best interest in contravention of the Children's Act.

[22] Having considered the evidence before me I am satisfied that the applicant is successful in his urgent application. The applicant does not wish the

respondent to pay any punitive costs, the applicant seeks normal costs occasioned by the applicant, which the applicant as bare minimum is entitled to.

Order

[23] In the result, the following order is made:

23.1 The respondent is ordered to pay costs reserved on 31 October 2025.

23.2 The applicant is granted leave to present its bill of costs.

23.3 The respondent is ordered to pay costs of this application.

B. F. MNYOVU

**ACTING JUDGE OF THE HIGH COURT
NORTH WEST HIGH COURT, MAHIKENG**

APPEARANCES:

Counsel on behalf of Applicant: Adv S. Nel

Instructed by: Laufs Attorneys

Counsel on behalf of Respondent: Adv C. Wessels

Instructed by: Jooste and Moodie Attorneys